

State of Iowa Office of Ombudsman



**Ola Babcock Miller Building
1112 East Grand Avenue, Des Moines IA 50319
www.legis.state.ia.us/ombudsman**

“OMBUDS - WHAT”



- ◉ Swedish term - representative or agent
- ◉ First Ombudsman – 1809 – Sweden
- ◉ The term is gender neutral

EVOLUTION OF THE OMBUDSMAN IN THE U.S.

- ◉ Classical, legislative branch, general jurisdiction
- ◉ Specialized jurisdiction, executive branch
- ◉ Long-term care ombudsman
- ◉ Organizational ombuds

CLASSICAL OMBUDSMAN MODEL

An independent, nonpartisan officer of the legislative branch of government with broad jurisdiction over governmental agencies and officials.

This enables the ombudsman to be independent of the agencies under his or her jurisdiction.

CLASSICAL OMBUDSMAN STANDARDS

Four Essential Elements

Independence
Impartiality
Confidentiality
Credible review process

INDEPENDENCE

- ◉ A core defining principle of an effective and credible ombudsman
- ◉ Free from outside control or influence in structure, function and appearance
- ◉ Enables the ombudsman to be an impartial critic

IMPARTIALITY

- ◉ The heart of the ombudsman concept
- ◉ Instills confidence in both the public and agencies that complaints will receive a fair review
- ◉ Encourages all parties to accept the findings and recommendations

CONFIDENTIALITY

- ◉ A key tool of the ombudsman
- ◉ Ombudsman should have the privilege and discretion to keep confidential or release any information related to a complaint or investigation
- ◉ Ombudsman should not be compelled to testify or release records

CREDIBLE REVIEW PROCESS

- ◉ Accessible to all potential complainants and records
- ◉ Acts in a manner that engenders respect and confidence
- ◉ This standard is necessary for the work of the ombudsman to have value and to be accepted by all parties to a complaint

IOWA OMBUDSMAN



The first ombudsman position was created
by Governor Robert D. Ray
in 1970 as a two year pilot project funded
by a federal grant.

In 1972, the Office of Ombudsman was
created by statute as a legislative agency.
Iowa Code Chapter 2C

Honorable Robert D Ray, Governor of Iowa
First Inaugural Message, January 16, 1969

As a step in combatting the perilous impersonality of government and in giving citizens a renewed sense of direct participation in their government, the office of ombudsman should be established, subject to appointment by the Governor and confirmation by the Senate. The concept has a 160-year history of success, beginning in Sweden and recently under consideration in more than half of our fifty states. An ombudsman would serve as a channel for redressing individual grievances which are beyond the reach of present court procedures and leave many people voiceless. Additionally, the ombudsman would analyze grievances and seek better administration of public agencies. He would improve the performance of legislative functions through identification and recurring problems which may require corrective legislation. Finally, experience has shown that an ombudsman improves the morale of public servants and increases public confidence in them, by ventilating unfounded criticism and rejecting unfounded complaints.

JURISDICTION AND SUBJECT MATTER

“Agency” - All governmental entities, departments, boards, commissions, councils or institutions, and any officer, employee or member thereof acting or purporting to act in the exercise of official duties. §2C.1(2).

Also includes any person providing child welfare or juvenile justice services under contract with any agency. §2C.9(2).

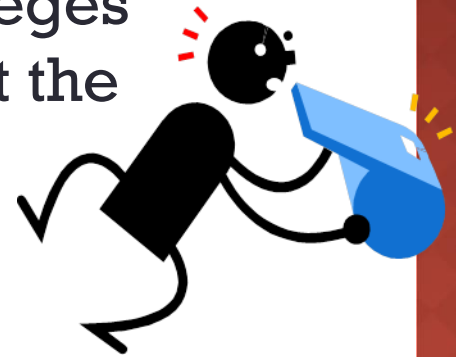
Exceptions include courts, judges, and appurtenant judicial staff, governor and his staff, members of the legislature and their staffs. §2C.1(2).

“Administrative action” - Any policy or action taken by an agency or failure to act pursuant to law. §2C.1(1).

Agency employee’s employment relationship is exempted. §2C.9(1).

a. Exception for complaints from a state employee, not in merit system or covered by a collective bargaining agreement, who alleges adverse employment action taken against the employee as a “whistleblower.” §2C.11A.

b. Adverse employment action includes discharge, suspension, demotion, reduction in pay, or not getting an appointment, promotion, or other advantage in a position. §70A.28(2) and (5A).





Issues for investigation include administrative actions which might be:

- ✓ Contrary to law or regulation;
- ✓ Unreasonable, unfair, oppressive or inconsistent even though in accordance with law;
- ✓ Based on a mistake of fact or arbitrary in the determination of facts;
- ✓ Based on improper motivation or irrelevant consideration; or
- ✓ Unaccompanied by an adequate statement of reasons. §2C.11.

In addition to addressing specific complaint, can conduct more systemic reviews of agency procedures and practices. §2C.11.

Other references in Code of Iowa

- ❖ Resource for aggrieved persons under chapter 23A (Noncompetition by Government). §23A.4.
- ❖ Resource for victims of domestic abuse alleging misconduct by peace officers. §236.16(1).
- ❖ State employee may disclose wrongdoing as a “whistleblower” to Ombudsman. §70A.28(2).
Ombudsman’s investigative findings related to alleged violation of “whistleblower” protections may be introduced as evidence in an administrative action filed by the eligible state employee. §70A.28(6). Information about “whistleblower” law given to state employees is to include Ombudsman’s toll-free number. §70A.28(8).
- ❖ Representation on Child Support Advisory Committee. §217.3A(3).



STAFF

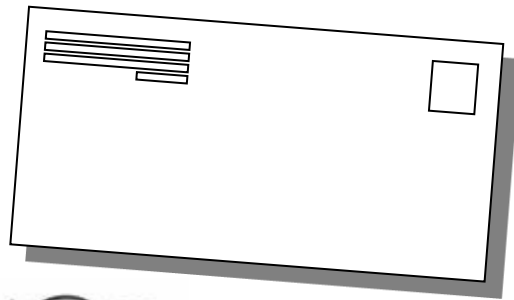
- ◉ Ombudsman
- ◉ Legal Counsel
- ◉ Assistant Ombudsman (12)
(Specialists/Intake)
- ◉ Finance Officer
- ◉ Secretary/Receptionist

COMPLAINT AND INVESTIGATIVE PROCESS

- ◉ Intake
- ◉ Preliminary Review and Inquiry
- ◉ Notice
- ◉ Investigation
- ◉ Recommendations

- ◉ Published Reports
- ◉ Legislative Recommendations
- ◉ Refer for Criminal or Disciplinary Action

INTAKE

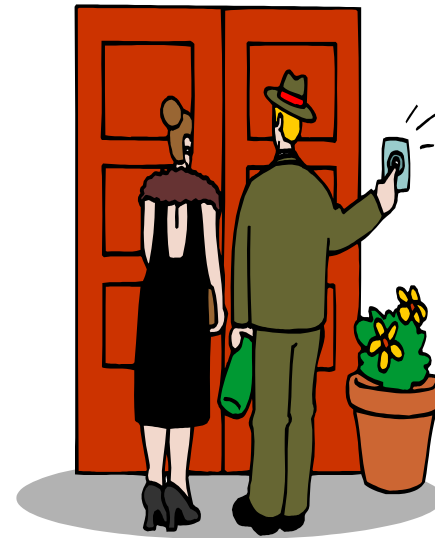


Reasons for Declining Further Inquiry... §2C.12

- ❖ Another remedy or channel of complaint is available
- ❖ Outside the Ombudsman's authority
- ❖ Not directly affected
- ❖ Trivial, frivolous, vexatious, or not made in good faith
- ❖ Other complaints more worthy
- ❖ Insufficient resources
- ❖ Not timely

PROVIDING NOTICE

- ✖ **Oral or written**
- ✖ **Formal or informal**



ACCESS TO INFORMATION – 2C.9(4)

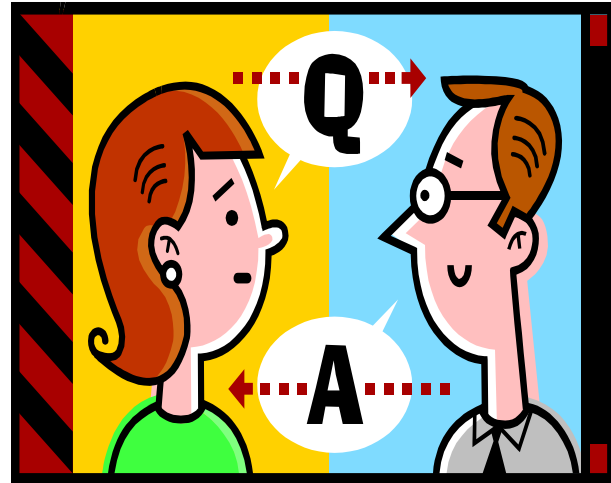


Ombudsman can:

- ✓ examine any and all records and documents,
- ✓ enter and inspect premises within any agency's control, and
- ✓ attend proceedings and hearings.

ACCESS TO INFORMATION - SUBPOENA

The Ombudsman may issue a subpoena to compel any person to appear, give sworn testimony, or produce documentary or other evidence relevant to a matter under inquiry.
2C.9(5).



ACCESS TO **CONFIDENTIAL** INFORMATION –

- ◉ This includes confidential records and proceedings.
- ◉ Confidential records maintain their confidentiality, and the same policies and penalties apply to the Ombudsman.
- ◉ An agency can deny access if it can show it would violate federal law or result in the denial of federal funds to the agency.

Citizens' Aide/Ombudsman v. Rolfes, 454 N.W.2d 815 (Iowa 1990)

Ombudsman's investigation is not a "contested case" proceeding under Iowa Administrative procedure Act; the investigation does not involve adjudication of legal rights, duties, or privileges, but only the discovery of facts related to the investigation. A subject is not entitled as a matter of due process to a preinvestigation hearing.

Citizens' Aide/Ombudsman v. Grossheim, 498 N.W.2d 405 (Iowa 1993)

Ombudsman was entitled to obtain a copy of videotape of prison incident under investigation, even though the Ombudsman was permitted to view the videotape at the Department of Corrections office. Ombudsman was entitled to presumption to maintain the confidentiality of information on the videotape and protect the videotape's integrity.

Citizens' Aide/Ombudsman v. Miller, 543 N.W.2d 899 (Iowa 1996)

Ombudsman has statutory authority to access investigative files of licensing boards which are otherwise privileged and confidential by law. The clash between the power of investigation and right to confidentiality can be reconciled. In order to fulfill its role, the Ombudsman must have widespread access to agency records. The licensing boards' files will continue to maintain their confidential status with the Ombudsman.

Office of Citizens' Aide/Ombudsman v. Edwards, 825 N.W.2d 8 (Iowa 2012)

Department of Corrections ALJ is an employee of a state agency, subject to the Ombudsman's investigative authority. However, serving in a quasi-judicial capacity, an ALJ may assert the "mental process privilege" protecting the ALJ from compelled testimony as to her thought processes behind her decision, absent a strong showing of bad faith or improper behavior. In this case, the Ombudsman presented sufficient evidence of improper behavior to overcome the qualified privilege.

PENALTY FOR OBSTRUCTION



A person who willfully obstructs lawful actions of Ombudsman or staff or misleads or attempts to mislead them during an inquiry is guilty of a simple misdemeanor. §2C.22.

INVESTIGATIVE AGENCY

- ◉ An Ombudsman investigation only discovers facts. It is not a contested case and does not adjudicate rights, privileges, or duties.
- ◉ A subject is not entitled to a preinvestigation hearing as a matter of due process

Citizens' Aide/Ombudsman v. Rolfes, 454 N.W.2d 815
(Iowa 1990)

POST-INVESTIGATION

- ✓ Make Recommendations
- ✓ Publish Report 2C.15
- ✓ Legislative Recommendation 2C.16
- ✓ Referral for Criminal or Disciplinary Action 2C.19

PUBLISHED REPORT

§2C.15

WHY?

Systemic
Significant



- ~ Copy to agency
- ~ Agency response
- ~ Response included in report



COMPLAINTS ARE UP OVER 9% YTD IN 2017

**Why this
office is
important...**

QUESTIONS?